Workmen's Compensation Act—Assault by Fellow Employee—Notice to Employee of "Skylarking."—In Mountain Ice Co. *v.* McNeil (N. J.), 103 Atl. 184, it was held that where the "skylarking" of boy employees came under the observation of officers of the employer company they were not charged with contemplating that one boy might thereafter commit an atrocious assault upon another but that they were charged with no more than that the "skylarking" or "horseplay" might occur again.

The court said: "This case is entirely unlike the McNicol case (215 Mass. 497, 102 N. E. 697, L. R. A., 1916A, 306; cited in Hulley *v.* Moosbrugger, 88 N. J. Law, at page 163, 95 Atl. 1007, L. R. A., 1916C, 1203), for there it was held that injuries resulting in the death of an employee while doing work, from blows or kicks given him by a fellow workman in an intoxicated frenzy, and passion, such fellow workman being known by the superintendent to have the habit of drinking to intoxication, and when in that condition to be quarrelsome, dangerous and unsafe to work with, was knowingly permitted to work on the day of the injury while in such condition of intoxication, and it was held that the injury thus received arose out of and in the course of the workman's employment; while here the only propensity which was discovered to the officers of the company by the conduct of the boys was that one or both were likely to engage in skylarking or horseplay, a thing which most, if not all, boys do, without any resulting criminal assault, and without any contemplation of such result by any one, adult or infant.

"The case before us is much more like that of Armitage *v.* L. & Y. R'y (1902, L. R. & 2 K. B. 178, also cited in Hulley *v.* Moosbrugger, 88 N. J. Law 165, 95 Atl. 1007, L. R. A., 1916C, 1203), in which a boy sixtetn years of age was pushed into a pit by another boy, where they were at work, for a 'lark,' and, becoming angry, picked up a bit of iron and threw it at the boy who had pushed him in, but hit another boy in the eye, injuring him, for which he was not allowed to recover damages. Collins, M. R., observed that this was a wrongful act entirely outside of the scope of the employment, and that the statute did not provide an insurance for a workman against every happening to him while engaged in his employment, but only against accidents arising out of and in the course of that employment, and that an accident caused by a fellow workman doing a wrongful act entirely outside the scope of his employment was not such an accident so arising.

"Walther *v.* Am. Paper Co. (89 N. J. Law 732, 99 Atl. 263) shows that an atrocious assault (there resulting in death) upon a workman is not considered as arising out of his employment when the employee is struck down in circumstances in no way relating to the employment."